

DRAFT NIA P10
Reclamation Manual
Policy

Subject: Indian Policy of the Bureau of Reclamation

Purpose: The purpose of this Policy is to provide an integrated framework for Reclamation to comply with applicable law and policy pertaining to working with Indian tribes. The benefit is to aid Reclamation to appropriately consider and interact with Indian tribes when executing Reclamation's mission.

Authority: See Appendix A.

Approving Official: Commissioner

Contact: Director, Native American and International Affairs Office (NAIAO) (96-43000)

1. **Introduction.** The United States has a unique legal and political relationship with Indian tribes as provided for in the Constitution, treaties, and other Federal laws and policies. Aspects of this relationship include, but are not limited to, the Federal trust responsibility and government-to-government relationship. Reclamation also recognizes that many Indian tribes have a critical need for water and water resource infrastructure. This Reclamation Manual Policy, which replaces the February 25, 1998 unified Indian policy, reaffirms Reclamation's commitment to comply with the laws and policies that define this special relationship with Indian tribes and is intended to ensure that tribes have the opportunity to participate in the Reclamation Program.
2. **Applicability.** This Policy applies to all Reclamation employees whose duties, responsibilities, and activities have the potential to affect Indian tribes and their members. The Policy must be integrated into all Reclamation processes and activities, including but not limited to operations, planning, and compliance with environmental and cultural resources requirements.
3. **Definitions.**
 - A. **Cultural Items.** The term "cultural items" means human remains, associated funerary objects, unassociated funerary objects, sacred objects, and cultural patrimony. 25 USC 3001. See also Reclamation Manual Policy LND P01.
 - B. **Cultural Resources.** The term "cultural resources" means any prehistoric or historic district, site, building, structure, object, cultural landscape, sacred site, and traditional cultural property. See Reclamation Manual Policy LND P01.
 - C. **Indian.** The term "Indian" means a person who is a member of an Indian tribe.
 - D. **Indian Sacred Sites.** The term "Indian sacred sites" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an

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Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site. Executive Order (EO) 13007, Section 1(b)(iii).

- E. **Indian Tribe or Tribe.** The terms “Indian tribe or tribe” mean an Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Department of the Interior (Interior) acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 USC 479a. The terms also mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688, 43 USC 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 USC 450b(e).¹
- F. **Indian Trust Asset or Trust Resources.** The terms “Indian trust asset or trust resource” mean a legal interest in land, water, minerals, funds, rights, or other property that have been reserved by or granted to Indian tribes or Indian individuals by treaties, statutes, and EOs and held by the United States in trust for an Indian tribe or Indian individual, or held by an Indian tribe or Indian individual subject to a restriction on alienation imposed by the United States. These legal interests, which may include ownership or the use interests, are sometimes further interpreted through court decisions and regulations.²
- G. **Indian Trust Responsibility or Trust Responsibility.** The terms “Indian trust responsibility or trust responsibility” mean the Reclamation obligation to protect and maintain Indian trust assets or trust resources. This responsibility requires Reclamation to take actions reasonably necessary under applicable laws and policies to protect Indian trust assets or trust resources.
- H. **Law and Policy or Laws and Policies.** The terms “law and policy or laws and policies” mean the statutes, regulations, court opinions, EOs, Secretarial Orders, Executive Memoranda, policies, directives, and other pertinent procedural requirements for working with Indian tribes and their members which are applicable to Reclamation activities.

¹ In recent years, Interior has appeared to favor the “List Act” definition. See for example SO 3317 – Department of the Interior Policy on Consultation with Indian Tribes. However, both definitions continue to be used within Interior and so are provided here. For most Reclamation purposes, these definitions are functionally equivalent, with one sometimes favored over the other depending on the definition used in the associated law and policy.

² For most Reclamation purposes, the terms “Indian trust assets” and “trust resources” are functionally equivalent, with one sometimes favored over the other depending on the term used in the associated law and policy.

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- I. **Native American Affairs Program.** The term “Native American Affairs Program” means the program managed by the Director, NAIAO.³
 - J. **Native American Affairs Technical Assistance to Tribes Program.** The term “Native American Affairs Technical Assistance to Tribes Program” means the technical assistance provided to an Indian tribe that is funded by the Native American Affairs Program and implemented by the regions following guidance provided by the NAIAO.
 - K. **Native American Program.** The term “Native American Program” means all Reclamation projects, programs, and activities, or portions thereof, with the potential to benefit federally recognized Indian tribes, regardless of the Reclamation program or project that they are otherwise associated with.
 - L. **Reclamation Directors.** The term “Reclamation director” means regional directors; Director, Information Resources; Director, Security, Safety and Law Enforcement; Director, Program and Budget; Director, Policy and Administration; Director, Management Services Office; Director, Technical Resources; and Director, Technical Service Center.
 - M. **Reclamation Program.** The term “Reclamation Program” means those activities authorized under the Reclamation Act of 1902 (32 Stat. 388, chapter 1093; 43 USC 371 et seq.) and Acts supplementary and amendatory thereof.
4. **Responsibilities.**
- A. **Commissioner.** The Commissioner is responsible for promoting and maintaining Reclamation’s Native American Program and ensuring that Reclamation upholds its responsibilities to Indian tribes.
 - B. **Director, NAIAO - Operations Directorate.** The Director, NAIAO is responsible for:
 - (1) managing Reclamation’s Native American Affairs Program;
 - (2) providing policy guidance and recommendations for Reclamation’s Native American Program that are consistent with applicable laws and policies and reflect the Administration’s priorities;
 - (3) providing guidance and program support to Reclamation representatives on Federal Indian water rights settlement assessment, negotiation, and implementation teams, including technical support in furtherance of settlement activities;

³ The Native American Affairs Program is part of Reclamation’s Native American Program.

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- (4) leading and overseeing Reclamation-wide implementation of the Indian Self-Determination Act (Title I of Pub. L. 93-638, as amended, 25 USC 450 et seq.) and the Tribal Self-Governance Act (Title IV of Pub. L. 93-638, as amended, 25 USC 458aa to 458hh)⁴;
- (5) providing guidance and program support to the regions to implement the Native American Affairs Technical Assistance to Tribes Program;
- (6) offering training to Reclamation managers and staff for the purpose of improving Reclamation's effectiveness in working with Indian tribes;
- (7) coordinating with Interior and other governmental entities on various initiatives pertaining to Indian tribes and having Reclamation-wide implications;
- (8) analyzing, reviewing, and commenting on proposed laws and policies pertaining to Indian issues that have Reclamation-wide implications;
- (9) maintaining a qualified professional staff to analyze Indian related issues and communicate the implications to others within and external to Reclamation, providing guidance on the application of applicable laws and policies to Reclamation, and performing other administrative requirements related to working with Indian tribes; and
- (10) seeking funding at the appropriate level for the Native American Affairs Program.

C. **Deputy Commissioners and Reclamation Directors.** Deputy commissioners and Reclamation directors are responsible for implementation and accomplishment of Reclamation's Native American Program within their respective program areas or regions. This responsibility includes:

- (1) complying with and implementing applicable laws and policies pertaining to Indian tribes; and
- (2) ensuring that employees and managers who interact with Indian tribes or who work on matters potentially affecting them have the knowledge, skills, ability and funding to work effectively with tribes and ensure that tribal interests are appropriately considered.

D. **Regional Directors.** In addition to the responsibilities identified above for all Reclamation directors, regional directors also are responsible for:

⁴ Both of these titles are part of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended). See NIA 10-01, Requirements for Execution and Administration of Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended) Contracts and Annual Funding Agreements.

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- (1) assigning Native American Program management responsibilities to appropriate qualified staff; and
 - (2) seeking funding at the appropriate level to ensure Native American Program accomplishment within their areas of responsibility.
5. **Indian Policy.** Reclamation will carry out its programs and projects in compliance with the letter and the spirit of laws and policies relating to Indians; acknowledge and affirm the special relationship between the United States and Indian tribes; and, as appropriate, actively seek partnerships with Indian tribes to ensure that tribes have the opportunity to participate fully in the Reclamation Program as tribes develop, manage, and protect their water and related resources.
 - A. **Government-to-Government.** In recognition of the inherent powers of tribal sovereignty and self-government, Reclamation will respect the special legal and political relationship between the United States government and Indian tribes and implement its activities in a manner consistent with it.
 - B. **Consultation.** Reclamation will pursue meaningful and proactive consultation, consistent with applicable laws and policy, with Indian tribal governments on matters of mutual interest, including but not limited to the protection of Indian trust assets, Indian sacred sites, and Indian cultural resources. Reclamation will work with interested tribal governments to negotiate protocols about mutually agreed-upon principles and procedures for conducting consultation, maintaining government-to-government relationships, and entering into partnerships and collaborative efforts.
 - C. **Trust Responsibility.** Reclamation supports Interior's trust responsibility policy and will discharge, without limitation, the Secretary's Indian trust responsibility with a high degree of skill, care, and loyalty. See 303 DM 2, Principles for Managing Indian Trust Assets.
 - (1) **Indian Trust Asset Protection.** Reclamation will carry out its activities in a manner that protects Indian trust assets and avoids adverse impacts when possible. When Reclamation cannot avoid such adverse impacts, it will provide appropriate mitigation or compensation.
 - (2) **Water Rights.** Reclamation will actively support and participate in Interior's Indian water rights negotiation and implementation activities, as it works to resolve the water rights claims of Indian tribes through negotiated settlements rather than litigation, when feasible.
 - (3) **Tribal Trust and the Endangered Species Act.** Reclamation will implement the Endangered Species Act (Pub. L. 93-205) in a manner that respects the

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exercise of tribal sovereignty over the management of Indian lands and tribal trust resources.

- D. **Self-Determination and Self-Governance.** Reclamation supports national policies of self-determination and self-governance for Indian tribes, and will seek and embrace opportunities to work with interested Indian tribes under the applicable parts of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).
- E. **Culture and Cultural Values.** Reclamation will endeavor to respect Indian cultures and tribal values.
- (1) **Indian Sacred Sites.** Reclamation will manage Federal lands under its jurisdiction to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and avoid adversely affecting the physical integrity of such sacred sites. These actions will be carried out to the extent practicable, permitted by law, and not clearly inconsistent with essential bureau functions.
 - (2) **Human Remains and Cultural Items.** Reclamation will treat Native American human remains and cultural items with dignity and respect, and consult with Indian tribes with the goal of developing mutually agreed-upon avoidance, treatment, and repatriation or disposition processes.⁵
 - (3) **Cultural Resources.** Reclamation recognizes that certain cultural resources can have special importance to Indian tribes and will seek to work with tribes to avoid adversely affecting cultural resources identified by tribes as important, and to determine appropriate mitigation measures when such effects cannot be avoided.⁶
- F. **Opportunities to Work Together.** Reclamation will seek to provide assistance, through partnerships, to Indian tribes to increase opportunities for tribes to develop, manage, and protect their water and related resources. Reclamation will seek to identify and remove impediments to tribal participation in the Reclamation Program, and ensure that Indian tribes have the opportunity to learn about, participate fully in, and receive the benefits of the Reclamation Program.

⁵ Refer to LND P01 and LND 02-01 for further detail concerning Reclamation treatment of human remains and cultural items.

⁶ Refer to LND P01 and LND 02-01 for further detail concerning Reclamation cultural resources management.